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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/781,379

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Michael S. Terretta

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MCCARTER & ENGLISH LLP
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EXAMINER

BATES, KEVIN T

ART UNIT

PAPER NUMBER

2155

6

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/781,379

Applicant(s)

TERRETTA ET AL.

Examiner

Kevin Bates

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Declaration and Extension of time was received on June 21, 2001.

The Information Disclosure Statement was received on June 18, 2001.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kenner (5956716) (Applicants IDS).

Regarding claim 1, Kenner discloses a network communication system adapted to deliver a media file to a user (Column 4, lines 37 – 42), comprising: a) a plurality of media servers configured as a redundant array of media servers (Column 4, lines 43 – 53), each of said plurality of media servers communicating with at least two levels of media file storage (Column 4, lines 44 – 45); b) a metaswitch that communicates with said redundant array of media servers and is adapted to receive communications from and transmit communications to a user (Column 4, lines 54 – 57), said metaswitch including: a stream redirector adapted to redirect a user to one of said plurality of media servers within said redundant array of media servers to access a media file stored therewithin (Column 5, lines 9 – 13); a content collection that includes a listing of media files contained within said at least two levels of media storage for said plurality of media servers (Column 5, lines 1 – 7); a server collection that includes a listing of said plurality

of media servers (Column 4, line 65 – Column 5, line 9) and a health indicia for each of said plurality of media servers; a health monitor that is adapted to periodically collect measurements related to predetermined performance metrics for said plurality of media servers, and to update the health indicia for said plurality of media servers within said server collection based on said periodic collection of predetermined performance metrics (Column 30, lines 14 – 21); and a popularity engine that is adapted to track user requests for media files that are stored within said at least two levels of media storage and to command repositioning of said media files based upon said tracking of user requests (Column 5, lines 32 – 35); and a file mover that is adapted to respond to commands from said popularity engine and to reposition media files within said at least two levels of media storage (Column 10, lines 50 – 57); c) wherein said stream redirector redirects a user to one of said at least two levels of media file storage for one of said plurality of media servers to access a requested media file, based on input from said content collection and said server collection (Column 5, lines 10 – 14; lines 22 – 30).

Regarding claim 3, Kenner discloses that said metaswitch further comprises a load balancer, said load balancer providing an alternative source of input to said stream redirector for redirection of users to one of said plurality of media servers when said health indicia contained within said server collection is nondeterminative (Column 30, lines 2 – 12; lines 34 – 42).

Regarding claim 4, Kenner discloses that said predetermined metrics are selected from the group consisting of bandwidth usage, central processor unit usage, late reads of media files, and combinations thereof (Column 30, lines 44 – 50).

Regarding claim 5, Kenner discloses wherein said at least two levels of media file storage are selected from the group consisting of RAM storage, hard drive storage, and network attached storage (Column 8, line 52 – Column 9, line 3; Column 11, lines 26 – 44).

Regarding claim 6, Kenner discloses that said listing of media files within said content collection is updated based on tracking of user requests by said popularity engine (Column 5, lines 31 – 35).

Regarding claim 7, Kenner discloses that said plurality of media servers are grouped into server pools based on media files associated therewith (Column 28, lines 18 – 29).

Regarding claim 8, Kenner discloses that said health monitor dampens adjustments to health indicia for said plurality of media servers by averaging performance metrics across successive measurements, thereby minimizing the impact of bandwidth spikes (Column 30, lines 28 – 38).

Regarding claim 9, Kenner discloses that said stream redirector provides a user with a hierarchy of levels of media file storage for access to media files (Column 12, lines 10 – 13).

Regarding claim 10, Kenner discloses that said popularity engine is further adapted to monitor file storage levels within said at least two levels of media storage

and to command removal of media files therefrom based on preset threshold file levels (Column 5, lines 32 – 38).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner in view of Adrangi (6687846).

Regarding claim 2, Kenner discloses not explicitly indicate that said stream generator generates an .asx file to redirect a user. Adrangi teaches when redirecting a stream a metafile has to be created and in a Windows environment that metafile is an ASX file (Column 10, lines 43 – 45). It would be obvious to one of ordinary skill in the art at the time the invention was made to use Adrangi's teachings in Kenner's system to allow a stream redirector to easily find the URL path to a desired file and direct that file to the user (Column 10, lines 33 – 49).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Bates whose telephone number is (703) 605-0633. The examiner can normally be reached on 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (703) 308-6662. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MB

KB
June 28, 2004


HOSAIN ALAM
SUPERVISORY PATENT EXAMINER